



**Organization for Security and Co-operation in Europe**  
**The Representative on Freedom of the Media**  
**Miklos Haraszi**

238/05

Vienna, 10 October 2005

H.E. Theodor Meron  
President  
The International Criminal Tribunal for the former Yugoslavia

Your Honour,

Your institution works on bringing to justice the perpetrators of crimes committed during the post-Yugoslav conflicts and on ensuring the rule of law in that region. I congratulate you on your work.

I have already written to you on 2 May regarding the indictments of Croatian journalists for contempt of the Tribunal. At that time, I asked Your Honour to avoid imposing harsh measures that might have a chilling effect on journalism in the region.

I am writing to you again concerning this case. The prosecution has indicted an additional group of reporters (there are five journalists indicted overall). And on 6 October, acting on a 28 September arrest warrant issued by your Tribunal, Croatian police in Split arrested Josip Jovic, the former editor-in-chief of *Slobodna Dalmacija*, who failed to appear in court.

I see the indictments, and especially the arrest of the journalist, as highly worrying developments.

The journalists are indicted for publishing testimony given in a closed session and revealing the name of a protected witness during the *Prosecutor v. Tihomir Blaskic* case.

As it turned out, that protected witness is a high-ranking politician of the country.

The journalists who disclosed his testimony can be sentenced up to seven years in prison and fined up to 100,000 Euros, under Rule 77 of the Tribunal's Rules of Procedure and Evidence.

I have full respect for the institution of the protected witness. However, I believe that the ICTY should operate in accordance with the principles of freedom of the press and, as a result, apply the same safeguards in its procedures that are usually expected in national jurisdictions. In particular, I believe the ICTY should respect the public's right to know, and its interest in an uninhibited debate about past crimes and present leaders.

According to the case law of the European Court of Human Rights (ECHR) and the judicial practices of many democracies, imprisonment of a journalist for revealing a secret is always disproportionate punishment, and hinders unconstrained debate of public issues.

While I do not question the importance of protecting the integrity of the judicial process, I also note that this is a value that needs to be weighed against the overall public interest in a free flow of information. Under ECHR standards, and in many national jurisdictions, the latter is judged to outweigh the former in cases involving high-ranking public dignitaries.

In any democracy the fact that a leading politician had testified in a court of law would be of considerable public interest, and therefore a natural subject for reporting. I hope that this simple truth is taken into account when adjudicating the journalists' cases.

Also, in democratic jurisdictions, it is recognised that journalists should not be liable for further dissemination of classified information. Rather, those who were privy to the classified information, and leaked it, should bear responsibility for any harm done. In this case, however, only people at the receiving end of the leaked secrets seem to be accused.

Let me refer, in this regard, to a Joint Declaration of three special rapporteurs on freedom of expression representing the UN, OSCE and OAS, issued on 6 December 2004. It states: "Public authorities and their staff bear sole responsibility for protecting the confidentiality of legitimately secret information under their control. Other individuals, including journalists and civil society representatives, should never be subject to liability for publishing or further disseminating this information, regardless of whether or not it has been leaked to them, unless they committed fraud or another crime to obtain the information."

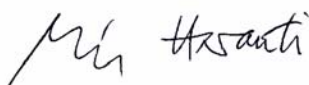
I believe this approach can and should be applied by the ICTY, especially given the fact that Rule 77 is a special procedural directive created by the Tribunal itself. It is designed to protect the administration of justice and, in doing so, must take other basic human rights into account. As such, its violation by journalists in pursuit of serving the public's right to know, should not attract liability, and certainly not imprisonment.

Considering all the above, I ask your Honour to ensure that Mr Jovic is released, thus make it known to the public that your rulings take into account the interests of development of a free press in Croatia and in all countries under your jurisdiction.

I also ask you to consider amending Rule 77 so that it would only apply to those individuals who have actually leaked confidential information to which they had legitimate access as part of their professional work.

Let me assure you again of the highest regard I hold for your institution and its honourable work.

Yours sincerely,



Miklos Haraszti